IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	John L. Gargiulo, et al.
Serial No.:	09/944,292
Filing Date:	August 31, 2001
Art Unit:	2157
Confirmation No.:	1901
Examiner:	Avi M. Gold
Title:	*DISTRIBUTED NETWORK QUERY*

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the application in light of the remarks set forth below.

REMARKS

In the Office Action mailed August 27, 2007 ("Office Action"), Claims 1-11, 13-16, 18-36, and 38-52 were pending, of which, Claims 1-11, 13-16, 18-36, and 38-52 were rejected. The Examiner has rejected these claims at least twice. For example, Claims 1-11, 13-16, 18-36, and 38-52 were also rejected in a previous Office Action mailed March 9, 2007. Applicants contend that the rejections of Claims 1-11, 13-16, 18-36, and 38-52 contain clear legal and factual deficiencies, as described below. Applicants request a finding that the rejections of Claims 1-11, 13-16, 18-36, and 38-52 are improper, and that these claims are allowable.

Section 103 Rejections

The Examiner rejects Claims 1-3, 5-11, 13-15, 21-28, 30-36, 38-40, 46, 47 and 49-52 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,192,404 B1 issued to Hurst, et al. (*"Hurst"*) in view of U.S. Patent No. 6,636,887 issued to Augeri (*"Augeri"*). The Examiner rejects Claims 16, 18-20, 41-45 and 48 under 35 U.S.C. 103(a) as being unpatentable over *Hurst* in view of U.S. Patent No. 5,471,461 issued to Engdahl, et al. (*"Engdahl"*), in view of *Augeri* and further in view of U.S. Patent No. 6,791,981 B1 issued to Novaes (*"Novaes"*). Applicants respectfully traverse these rejections for at least the reasons stated below.

Claim 1 recites, in part, "calculating a delay period based at least in part on...a network address associated with the at least one node." Both *Hurst* and *Augeri* fail to teach, suggest, or disclose this aspect of Claim 1.

Hurst

Hurst describes a method for determining the time-to-live (TTL) distances between a base node and other nodes in a network. (*Abstract*). According to *Hurst*, the base node generates multiple query messages, and each query message comprises a different "TTL parameter value." (Col. 6, ll. 25-36). *Hurst* explains that a TTL parameter value may represent a number of network hops. (Col. 1, ll. 47-56). After generating the query messages, the base node multicasts the query messages over the network. Each time a particular query message is passed from one node to another, the TTL parameter value (e.g., network hop value) of that query message is decremented by one. (Col. 1, ll. 46-67; col. 2, ll.

1-18). *Hurst* explains that a particular query message is destroyed when its TTL parameter value falls to zero. (Col. 2, ll. 13-15). Thus, *Hurst* concludes that a network node that is far from the base node will likely not receive query messages having low TTL parameter values. (Col. 2, ll. 1-18; col. 6, ll. 58-60). *Hurst* explains that the "lowest TTL parameter value of any TTL query message to reach" a particular node "is determined by TTL determining logic...to be the TTL distance between" the base node and the particular node. (Col. 7, ll. 5-8). Thus, *Hurst* describes a method for determining TTL distances between a base node and other nodes in a network.

Notably, there is nothing in *Hurst* that teaches, suggests, or discloses a "delay constant" or a "network address associated with at least one node." In addition, *Hurst* fails to teach, suggest, or disclose "calculating a delay period based at least in part on the delay constant and a network address associated with the at least one node" as recited in Claim 1. These deficiencies of *Hurst* are not cured by *Augeri*.

Augeri

The cited portion of *Augeri* discloses a tele-jam system that comprises a telephony server that is communicatively coupled to multiple client devices via a network. (Abstract). In particular, *Augeri* describes a method to test the latency between a particular client device and the telephony server. (Col. 6, lines 49-59). *Augeri* explains that the telephony server sends a test packet, including the originator network address, to the client device. (Col. 6, lines 60-67). The client reads the originator network address and sends a response packet back to the server. (Col. 6, line 60 – col. 7, line 3). The telephony server determines latency based on the time difference between sending the test packet and receiving the response. (Col. 6, line 60 – col. 7, line 3). Notably, the only network address mentioned in *Augeri* is the network address of the telephony server. *Augeri* specifically states that the telephony server includes the "*originator* network address" in the test packet. (Col. 6, lines 63-64) (emphasis added). *Augeri* explains that the "client apparatus receives test packet, reads *originator* address, adds time stamp (or does not add time stamp) and sends packet back to server." (Col. 6, lines 65-67) (emphasis added). Thus, the only network address mentioned in *Augeri* is the network address of the telephony server, which is the device that generates and sends the test packet. (Col. 6, lines 63-64).

In contrast to *Augeri*, Claim 1 recites "calculating a delay period based at least in part on...a network address *associated with the at least one node*" that "*received*" the "query sent from a caller node." (Emphasis added). In addition, merely including the originator network address in the test packet in *Augeri* does not teach, suggest, or disclose "*calculating* a delay period based at least in part on...a network address associated with the at least one node" as recited in Claim 1. (Emphasis added). Thus, *Hurst* and *Augeri*, separately and in combination, fail to teach, suggest, or disclose "calculating a delay period based at least in part on...a network address associated with the at least one node" as recited in Claim 1.

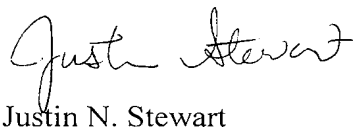
Consequently, Applicants respectfully contend that Claim 1 and each of its dependent claims are in condition for allowance. For reasons similar to those stated above with respect to Claim 1, Applicants further contend that Claims 6, 16, 21, 26, 31, 41, and 46-52, and each of their respective dependent claims are in condition for allowance.

CONCLUSION

As the rejections of Claims 1-11, 13-16, 18-36, and 38-52 contain clear legal and factual deficiencies, Applicants respectfully request a finding of allowance of Claims 1-11, 13-16, 18-36, and 38-52. If the PTO determines that an interview is appropriate, Applicants would appreciate the opportunity to participate in such an interview. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or credit any overpayments to **Deposit Account No. 02-0384 of Baker Botts L.L.P.**

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants



Justin N. Stewart
Reg. No. 56,449
(214) 953-6755

Date: November 27, 2007

CORRESPONDENCE ADDRESS:

at Customer No. **05073**